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ABSTRACT

In this speech the Assistant Attorney General of the Civil Rights Division of the Department of Justice notes that although progress has been made against racial and sex discrimination, there is an area in which civil libertarians have only recently become involved. This area concerns the rights of the mentally retarded and the mentally ill. A case involving conditions in Alabama's institutions is an example of the dehumanizing conditions to which this group is subject. In the landmark case, Wyatt Vs. Stickney, it was decided that institutionalized persons have a constitutional right to adequate care and treatment. The broader question however was whether the Department of Justice should become involved in other mental health cases. A situation involving the Willowbrook State School for the Mentally Retarded in Staten Island, New York helped to decide this issue in favor of involvement. After these two cases of litigation, the Civil Rights Division was deluged with requests to intervene in ongoing cases or to initiate litigation against institutions. The Division is now actively involved in 22 cases in the mental health/retardation field. Involvement in prisons remains a controversial area of concern. (Author/AM)

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Department of Justice

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"STANDING FOR WHAT'S RIGHT"

SPEECH

BY

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ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
DEPARTMENT OF JUSTICE

BEFORE THE

LAW WEEK BANQUET
SPONSORED BY MEMPHIS STATE UNIVERSITY
MEMPHIS, TENNESSEE

ON

MARCH 24, 1978

U S DEPARTMENT OF HEALTH,
EDUCATION & WELFARE
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Good evening. I have been the Assistant Attorney General for Civil Rights for a year now. During my year at the Division, I have been impressed by the number of issues we take on and the number of issues we still need to take on. Much of our work of course, is combatting the legacy of decades of massive racial injustice. This administration is committed to vigorous across the board enforcement of civil rights laws to eradicate discrimination based on race, sex, national origin or religion.

The problems are overwhelming, but there has been progress. Blacks are now beginning to receive decent educational and employment opportunities in areas where fifteen years ago voter registration was often out of the question. As this sense of progress has developed, we have begun to turn our attention to other civil rights problems and have discovered injustices and indignities as eye-opening as those that singed the nation's conscience a decade ago. I assure you that we will continue to pursue our mandate to enforce the civil rights laws against classic forms of discrimination. However, I would like to discuss with you tonight an area in which we have only recently become involved. I think it has a special significance for lawyers and lawyers-to-be.

In July 1971, while the Civil Rights Division was embroiled in several hundred racial discrimination cases, Judge Frank M. Johnson, Jr.,

invited the Department of Justice to appear as a litigating amicus curiae in a case involving conditions in Alabama's institutions for the mentally retarded and the mentally ill. The Attorney General directed lawyers from the Civil Rights Division to appear for the Department, even though no one in the Division had any experience to speak of in the area. What those lawyers found in their investigation was shocking almost beyond belief:

--- Residents tied to their beds at night;

--- Residents confined to straitjackets as long as 11 years because the hospitals were too understaffed to provide adequate care;

--- People denied access to toilet paper and instead stripped at the end of the day and paraded through a stream of hoses, car-wash style;

--- Residents dying after consuming unguarded drugs;

--- Residents confined to institutions solely because their mothers were in those institutions when they were born.

And things far, far worse that I will forebear mentioning.

The Department lawyers were stunned. It was bad enough to see people living in sub-human conditions, but that such a situation was not one with which we were familiar and probably not unique brought into question our entire civil rights efforts.

In that landmark case, Wyatt v. Stickney, Judge Johnson held that institutionalized persons had a constitutional right to adequate care and treatment and ordered broad relief to assure that the abuses in question were not repeated. The broader question, though, was whether the Department should become involved in other mental health cases. The Civil Rights Division was responsible for protecting the civil rights of American citizens. Here was a group of citizens living in wretched conditions and lacking the capacity to seek legal redress. Yet at the same time there were political problems to active involvement: traditional constituencies of the Civil Rights Division were understandably vying for our limited resources; and, any cases with the mentally handicapped would necessarily jostle federal-state relations, already under a severe strain from other enforcement efforts.

A situation involving the Willowbrook State School for the Mentally Retarded, in Staten Island, New York, helped to resolve the indecision. Network exposés had shown conditions at Willowbrook even worse than at the Alabama institutions in Wyatt. Willowbrook housed 5000 persons. 50 to 60 people to a room. Many had spent their entire lives there. Some had been diagnosed incorrectly as retarded. No meaningful treatment programs were provided; people spent their days in a room with concrete floors and tile walls,

50 to a room with little or no staff supervision. Unsanitary conditions had resulted in a hepatitis epidemic that infected 100% of the residents. Based on this evidence, the Department intervened in litigation initiated by relatives of the residents, and several months later entered into a comprehensive settlement. The Willowbrook population is now below 250. Retarded citizens both in Willowbrook and the community receive treatment and training. A vigorous monitoring panel has helped reduce institutional abuses, and the entire state has become aware of its responsibilities to the mentally retarded.

We learned several things from these two cases. We learned that retarded people are more like us than unlike us. They have feelings, they respond to the things we respond to, they dislike the things we dislike. They are people first and retarded second, a distant second.

We learned that nearly all retarded people can be trained and educated to lead productive lives, even to the point of earning money and suffering the irritation of taxes. Experts in the field showed us example after example of "hopeless" children who learned to lead normal lives. And yet with all these discoveries and advances, retarded people were still warehoused in emotionally and psychologically crippling environments with little or no hope in sight.

We realized also that as citizens these people have legal rights. They have the right to be removed from the community only when absolutely necessary and only after certain procedures have been followed. Anyone deprived of liberty and confined to an institution should be entitled to decent living conditions and proper treatment and care. These are legal rights. These are civil rights as fundamental as the rights to vote, speak, or worship freely, and the Division resolved to enforce them accordingly.

After Wyatt and Willowbrook, the Division was deluged with requests to intervene in ongoing cases or to initiate litigation against institutions. The problem of straining relations between state and federal governments still existed, but like the revelations at Birmingham and Selma the injustices could be ignored no longer.

The Civil Rights Division is now actively involved in 22 cases in the mental health/mental retardation field. The issues range from the procedure for involuntary commitments to living conditions to adequate treatment and care to community placements for overcrowded institutions. In every case that has gone to trial or summary judgment the court has ordered extensive relief. And the cases have taken us into related problem areas of the institutionalized, such as mental hospitals, prisons, and juvenile facilities.

Prisons have been a particularly controversial area for us. Many people have little or no sympathy for prisoners and dismiss accusations of mistreatment by saying prisoners are getting exactly what they deserve. I think most of those people do not realize how awful conditions are in most prisons in this country. In many prisons the living conditions, the threat of serious injury, the lack of adequate medical care and the psychic and emotional deterioration are every bit as bad as what we saw in mental institutions, if not worse. And prisoners are, theoretically at least, protected by the Eighth Amendment prohibition against "cruel and unusual punishment." In a case involving the Louisiana State Penitentiary at Angola, the court found that numerous homosexual rapes, 270 stabbings, and 20 deaths by stabbings had been committed in the previous three years. The court in that same case found that conditions existed which "should not only shock the conscience of any right thinking person, but which also flagrantly violate basic constitutional requirements as well as applicable state law..." And in another of our cases the court found "a degree of neglect of basic medical need of prisoners that could justly be called barbarous."

Once we became involved in the area, we did not confine our efforts to enforcing those few statutes that explicity protect the mentally handicapped and the institutionalized. Bills are pending in both houses of Congress to give the Attorney General

authority to bring "pattern or practice" suits on an institution-wide or even state-wide scale. And we have consulted with various state officials on ways to assure that the rights of all institutionalized persons are protected.

Some have questioned our active role in this area. Certainly, arguments exist for a limited role:

--- State governments feel we are usurping their prerogatives and insulting them to boot when their hands are tied by their own state legislatures;

--- The Division's resources are limited and perhaps we should pay heed to more visible or politically acceptable problem areas;

--- Litigation is not the comprehensive solution that the situation calls for.

But I see at least three good reasons to enter this area with determination and vigor. First, as the frieze over the Supreme Court building commands, there must be "Equal Justice For All." The "All" is for all citizens, not simply the powerful, articulate, or familiar. We must be mindful and respectful of state prerogatives, but our primary duty is to assure that all citizens receive justice and stand equal before the law.

Second, the Division can make an important contribution in the area. We cannot force legislatures to appropriate money, but no official likes to have a judment outstanding against his or her state, particularly one that says the state has committed serious violations against the retarded or mentally ill. Our efforts have also increased the awareness both in and out of government of the serious problems confronting those whom society sends away to institutions.

Third, the Division must maintain a leadership role when civil rights are called into question. I remember when James Meredith was prevented from attending classes at the University of Mississippi, the principal assistant of the Civil Rights Division at the time, John Doar, interceded on his behalf. During that difficult time, when an angry crowd confronted him, Mr. Doar, speaking through a bullhorn, said, "My name is John Doar and I stand for what's right." That is how I would like the Civil Rights Division and its lawyers to be seen: as standing for what's right.

Thank you.

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